

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Capitol Records, LLC, Caroline Records, Inc., EMI Christian Music Group Inc., Priority Records LLC, Beechwood Music Corp., Colgems-EMI Music Inc., EMI April Music Inc., EMI Blackwood Music, EMI Full Keel Music, EMI Golden Torch Music Corp., EMI Longitude Music, EMI Virgin Music, Inc., EMI Virgin Songs, Inc., EMI Al Gallico Music Corp., EMI Algee Music Corp., EMI Feist Catalog, Inc., EMI Gold Horizon Corp., EMI Grove Park Music, Inc., EMI Hastings Catalog, Inc., EMI Mills Music, Inc., EMI Miller Catalog, Inc., EMI Robbins Catalog, Inc., EMI U Catalog, Inc., EMI Unart Catalog, Inc., Jobete Music Co., Inc., Screen Gems-EMI Music, Inc., Stone Agate Music, and Stone Diamond Music,

Plaintiffs,

v.

MP3Tunes, LLC, and Michael Robertson,

Defendants.

No. 07 Civ. 9931 (WHP)

**MOTION OF NONPARTY THE MOTION PICTURE ASSOCIATION OF
AMERICA, INC., TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF
PLAINTIFFS**

Kelly M. Klaus (*pro hac vice* pending)
Melinda LeMoine
L. Ashley Aull (*pro hac vice* pending)
Munger, Tolles & Olson LLP
355 South Grand Avenue
Los Angeles, CA 90071
(213) 683-9100

Attorneys for *Amicus Curiae*
Motion Picture Association of America, Inc.

TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

Nonparty the Motion Picture Association of America, Inc. (“MPAA”) respectfully moves for leave of Court to file the accompanying *amicus curiae* brief in the above-captioned case in support of Plaintiffs on the parties’ cross-motions for summary judgment. Plaintiffs have consented to the filing of this brief. As of this date, Defendants have not indicated to the MPAA whether they will consent to the filing of this brief.

Founded in 1922, the MPAA is a trade association that advocates for the domestic motion picture, home video and television industries. The MPAA’s members and their affiliates include the largest producers and distributors of motion pictures and television programs in the United States. The members’ businesses depend upon effective copyright protection. As a result, they have a significant interest in the important questions that these motions present concerning the interpretation of the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, including the Digital Millennium Copyright Act provisions codified at § 512 (the “DMCA”), and issues concerning the interpretation of the Copyright Act’s public performance right, §§ 106(4), (6).

The MPAA in the attached brief seeks to address what it believes are the flawed legal arguments on these important issues presented by Defendants and their *amici* Public Knowledge, Electronic Frontier Foundation, Consumer Electronics Association, and Home Recording Rights Coalition. *See* Dkt. No. 203. The arguments that Defendants and their *amici* raise on these issues are contrary to the text of the statute and the case law interpreting it. Those arguments, if accepted, would create severe negative consequences for the MPAA’s members and for all copyright owners who suffer the devastating harms of mass Internet piracy. The MPAA recognizes that *amicus* briefs are not routinely filed in connection with summary judgment proceedings in the District Court. However, the MPAA believes that the arguments raised by

Defendants and their *amici* warrant a response on behalf of participants in a major industry that could be negatively affected by the judicial endorsement of those arguments.

For the foregoing reasons and based on the documents submitted herewith, the MPAA respectfully requests that the Court grant the motion to file the accompanying *amicus curiae* brief.

Dated: December 17, 2010

Respectfully submitted,

MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071-1560
(213) 683-9100

By: /s/ Melinda E. LeMoine

Melinda E. LeMoine
Attorneys for *Amicus Curiae*
Motion Picture Association of America,
Inc.